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Intellectual Property Law

F A C S I M I L E

To: Hanh Phan, Examiner
U.S. Patent & Trademark Office
Group Art Unit 2633

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From: Richard E. Wawrzyniak, Esq. (858) 552-1311

Date: October 18, 2004

Pages: (including this one-page cover) 6

RE: **Telephonic Interview Request**
Application Serial No. 09/835,866
Our Ref No.: 69971 (7293)

This is for our interview scheduled for Wednesday, October 20, 2004, at 3:00 p.m. EST. Please call me at (858) 552-1311 if you have any questions.

Transmitted herewith:

Fax coversheet (1 pg.); Applicant Initiated Interview Request Form (1 pg. plus 4 continuation sheets)

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PTOL-413A (08-03)
 Approved for use through 07/31/2008. OMB 0651-0031
 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Applicant Initiated Interview Request Form

Application No.: 09 / 835,866 First Named Applicant: Heinz Willebrand
 Examiner: Hanh Phan Art Unit: 2633 Status of Application: Final Rejection

Tentative Participants:

(1) Examiner Hanh Phan (2) Richard W. Wawrzyniak, Esq.
 (3) Heinz Willebrand (Inventor) (4) _____

Proposed Date of Interview: October 20, 2004 Proposed Time: 3:00 (AM/PM) EST

Type of Interview Requested:

(1) Telephonic (2) Personal (3) Video Conference

Exhibit To Be Shown or Demonstrated: YES NO

If yes, provide brief description: _____

Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>Rejection</u>	<u>1, 3, 5, 6, 10, 15,</u> <u>23, 25, 35, 36</u>	<u>Wiedeman,</u> <u>Izadpanah et al., Lau</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Continuation Sheet Attached (4 sheets attached)

Brief Description of Arguments to be Presented:

The Examiner has not responded to Applicant's argument that Izadpanah et al. itself teaches against modifying that system to have a non-wireless alternate communication path. Lau is irrelevant because Izadpanah et al. teaches against the proposed modification. See attached pages 15-18 from Applicant's amendment mailed 5/3/04.

An interview was conducted on the above-identified application on _____.

NOTE:

This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

Richard E. Wawrzyniak, Esq. (Reg. No. 36, 048)

 10/18/04
 (Applicant/Applicant's Representative Signature)

(Examiner/SPE Signature)

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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formally file the proposed amendments and arguments and that the Examiner would consider them after they are filed.

Claim Rejections under 35 U.S.C. § 103

Izadpanah et al. in view Wiedeman

The Examiner rejected claims 1-12, 15-26 and 31-34 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0122230 A1 to Izadpanah et al. ("Izadpanah et al.") in view of U.S. Patent No. 6,587,687 B1 to Wiedeman ("Wiedeman"). Applicant respectfully traverses these rejections.

The Examiner asserts that Izadpanah et al. discloses all of the limitations of Applicant's independent claim 1 except for the "determining" step. The Examiner further asserts that it would have been obvious to incorporate the determining step allegedly taught by Wiedeman into the system of Izadpanah et al. (See Office Action mailed 01/05/2004, page 3, lines 7-10). In other words, the Examiner asserts that it would be obvious to modify Izadpanah et al.'s system based on the teachings of Wiedeman.

Applicant has amended independent claim 1 to recite routing the network data traffic through a "non-wireless" alternate communication path. Independent claims 3, 10, 15, 23 and 25 have been amended in a similar manner. These amendments are supported by Applicant's specification and drawings as originally filed. For example, see page 7, line 24 to page 9, line 9 of Applicant's specification. In addition, Applicant's FIG. 3 illustrates that the alternate communication path may comprise the wire cable 218 or the fiber optic cable 220, which are both non-wireless communication paths.

As Applicant explained in the telephone interview of

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April 9, 2004, there would be no motivation for a person of ordinary skill in the art to modify Izadpanah et al.'s system to have a non-wireless alternate communication path as is now recited in Applicant's claim 1. This is because Izadpanah et al. teaches against such a modification, such a modification would change Izadpanah et al.'s principal of operation, and such a modification would render Izadpanah et al. unsatisfactory for its intended purpose. As such, a person of ordinary skill in the art would not find a reason to make the modifications, which means that Izadpanah et al. cannot be used to establish a *prima facie* case of obviousness of Applicant's amended independent claim 1.

Specifically, Izadpanah et al. teaches against having a non-wireless alternate communication path because the reference is clearly focused on wireless communication links. For example, the title of Izadpanah et al. includes the words "wireless communication link". Furthermore, the first sentence of Izadpanah et al. states:

"The present invention relates to broadband communication systems, and more particularly to wireless communication links within broadband networks."

(Izadpanah et al., paragraph [0001]) (emphasis added).

Izadpanah et al. additionally indicates that its system is for "areas lacking fiber infrastructure". (See Izadpanah et al., paragraph [0002]). This teaches against having a non-wireless alternate communication path because such areas could not have a fiber alternate communication path. Izadpanah et al.'s heavy emphasis on wireless communication links would clearly dissuade a person of ordinary skill in the art from modifying that system to include a non-wireless alternate communication path.

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Section 2143.01 of the Manual of Patenting Examining Procedure (MPEP) states:

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious."

MPEP § 2143.01 Suggestion or Motivation To Modify the References.

Modifying Izadpanah et al.'s system to include a non-wireless alternate communication path would clearly change Izadpanah et al.'s principle of operation. This is because, again, Izadpanah et al. is clearly focused on wireless communication links. Changing from a wireless principal of operation to a non-wireless principal of operation is, to say the least, a huge change in the principal of operation, which means there would be no motivation to make such a modification.

Section 2143.01 of the MPEP states:

"If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)."

MPEP § 2143.01 Suggestion or Motivation To Modify the References.

Modifying Izadpanah et al.'s system to include a non-wireless alternate communication path would also render Izadpanah et al. unsatisfactory for its intended purpose. Namely, Izadpanah et al.'s intended purpose is for wireless communications. Modifying that system to include a non-wireless alternate communication path would render Izadpanah et al. unsatisfactory for purely wireless communications. As such, there would be no motivation to make such a

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modification.

Therefore, because a person of ordinary skill in the art would not find a reason to modify Izadpanah et al.'s system to include a non-wireless alternate communication path, Izadpanah et al. cannot be used to establish a prima facie case of obviousness of Applicant's amended independent claims 1, 3, 10, 15, 23 and 25, as well as Applicant's new independent claims 35 and 36. As such, the rejections must be withdrawn. Furthermore, the rejections of claims 2, 8-9, 11-12, 16-17, 19-20, 22, 24, 26 and 31-34 must be withdrawn for at least these same reasons due to their dependence on their respective independent claims.

The above reasoning also applies to Applicant's independent claims 5 and 6. Specifically, claim 5 recites that the alternate communication path comprises a "fiber optic communication path", and claim 6 recites that the alternate communication path comprises a "wire communication path". With respect to claim 5, the Examiner presumably asserts that it would be obvious to modify Izadpanah et al.'s FIG. 1(a) (which shows only wireless paths) to include a fiber optic alternate communication path using the teachings of Wiedeman's FIGS. 3 and 4. (See Office Action mailed 01/05/2004, page 4, lines 1-3). But because of the reasons already explained above, there is absolutely no motivation for a person of ordinary skill in the art to modify Izadpanah et al.'s system to include such a non-wireless alternate communication path. Moreover, the Examiner has provided no explanation whatsoever in the office action as to why there would be any such motivation.

Similarly, with respect to Applicant's claim 6, the Examiner presumably asserts that it would be obvious to modify Izadpanah et al.'s FIG. 1(a) (which shows only wireless paths)